

EY Tax Alert

Parliament passes bills amending GST law for taxability of supplies in casinos, horse racing and online gaming

Tax Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

This Tax Alert summarizes bills passed by the Parliament for amendments in the Central Goods and Services Tax Act, 2017 (CGST Act) and the Integrated Goods and Services Tax Act, 2017 (IGST Act) regarding taxability of supplies made in casinos, horse racing and online gaming.

The key amendments are as follows:

- ▶ The terms "Online gaming", "Online money gaming", "Specified actionable claim" and "Virtual digital asset" have been defined. Further, definition of "Supplier" and "Online information and data access or retrieval services" (OIDAR) are amended.
- ▶ Schedule III to the CGST Act is amended to cover transactions involving specified actionable claims within the purview of "supply".
- ▶ Section 24 of the CGST Act is amended to provide for mandatory registration of person supplying online money gaming, from a place outside India to a place in India.
- ▶ Proviso to Section 5(1) of the IGST Act has been amended to provide that in case of import of notified goods, the levy of integrated tax (IGST) shall be as per Section 5(1) of the IGST Act.
- ▶ New Section 14A has been inserted in the IGST Act to provide for special provision for online money gaming supplied by a person located outside the taxable territory to a person located in India.

Bills have been passed by both the houses of Parliament and awaits President's assent.

Background

- The Goods and Services Tax (GST) Council in its 50th and 51st meetings considered representation from various associations on the issues regarding taxability of supplies made in casinos, horse racing and online gaming and recommended necessary changes in the GST laws to provide clarity on their taxability.
- Accordingly, Parliament has now passed bills proposing amendments in the Central Goods and Services Tax Act, 2017 (CGST Act) and the Integrated Goods and Services Tax Act, 2017 (IGST Act).

Key Amendments

- Following definitions have been inserted in Section 2 of the CGST Act:
 - "*online gaming*" means offering of a game on the internet or an electronic network and includes online money gaming.
 - "*online money gaming*" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.
 - "*specified actionable claim*" means the actionable claim involved in or by way of–
 - (i) betting;
 - (ii) casinos;
 - (iii) gambling;
 - (iv) horse racing;
 - (v) lottery; or
 - (vi) online money gaming.
 - "*virtual digital asset*" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961
- A proviso has been inserted in the definition of "supplier" under Section 2(105) of the CGST Act to clarify that a person who organizes or arranges supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims.
- Section 2(17) of the IGST Act is amended to exclude "online money gaming" from the definition of online information and data access or retrieval (OIDAR) services.
- As per para 6 of Schedule III to the CGST Act, supply of actionable claims other than lottery, betting and gambling was excluded from the ambit of supply.

The said para is amended substituting the terms "lottery, betting and gambling" by "specified actionable

claims".

- A new clause (xia) is inserted in Section 24 of the CGST Act to provide for mandatory registration of the person supplying online money gaming, from a place outside India to a place in India.
- Proviso to Section 5(1) of the IGST Act has been amended to provide that in case of import of notified goods, the levy of integrated tax (IGST) shall be as per Section 5(1) of the IGST Act instead of Section 3 of Customs Tariff Act, 1975 read with Section 12 of Customs Act, 1962.
- A new Section 14A is inserted in the IGST Act to provide for following special provisions:
 - Liability to pay tax on supply of online money gaming by a supplier located outside India to a person in India,
 - Single registration for such supplier through simplified registration scheme, and
 - Blocking of public access to information in any computer resource used for supply by such person in case of failure to comply with the above requirements.
- Section 10 of the IGST Act is amended to provide that where the supply of goods is made to a person other than a registered person, the place of supply shall be:
 - location as per the address of the said person recorded in the invoice issued.
 - location of the supplier, where the address of the said person is not recorded in the invoice.

Comments

- As discussed in the 51st GST Council Meeting, the above amendments may be made effective from 1 October 2023. Further, the States may have to make corresponding amendments in their respective SGST Acts.
- The provisions for valuation of supplies made in casinos and online gaming are likely to be incorporated in the CGST Rules.
- While the online gaming companies are deemed to be the supplier, one will need to evaluate whether such transactions are being made in their course or furtherance of business to qualify as supply.
- It is pertinent to note that the amendments to make ISD mechanism mandatory are not incorporated in this bill.

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